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Mary Des Chene

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"Black Laws" and the "Limited Rights" of the People in Post-Andolan Nepal: The Campaign against the Proposed Anti-Terrorist Act of 2054 v.s.

Mary Des Chene

In 2054 v.s. (1997), the coalition Rastriya Prajatantra Party/CPN(UML) government under the premiership of Lokendra Bahadur Chand (RPP) attempted to pass into law the "Anti-Terrorist and Destructive Crime (Control and Punishment) Act 2054 v.s.". This bill, after being approved by the Council of Ministers, met with swift and widespread opposition and, ultimately, was not formally introduced into the parliament for debate and a vote.

In the second parliamentary session of 2054 v.s. (1998), a revision to the already existent "Crimes against State and Punishment Act, 2046 v.s." was introduced during the last days of the RPP/NC coalition under the premiership of Surya Bahadur Thapa (RPP).¹ When Girija Prasad Koirala (NC) took over as Prime Minister, his government continued the effort to pass this bill.² The amendment preserved intact the essence

of the previously proposed Anti-Terrorist Act (hereafter A-T Act). It met with a similarly swift and vociferous opposition and a similar fate.³

Prior to the proposal of these bills, many of the autocratic powers contained in them were already being exercised by the government (Amnesty International 1997a,b, 1998a; HRPS 1997). Subsequent to the successful campaigns to prevent passage of these bills, those trends have continued and intensified (Amnesty International 1998b,c; 1999a,b). Consider, for example, the following two accounts, one of an event prior to proposal of the A-T Act, the second of an event after both the A-T Act and the Amendment had been defeated:

22 year old Mrs. Sunsara Budha was the mother of two daughters. On 4 November, 1996 Sunsara Budha of Mirul VDC, Ward No. 6, Praja village, Rolpa was killed at 4 a.m. in front of her 2 year old daughter in Balkhanda jungle on the border between Mirul and Thawang VDCs. Residents of Mirul VDC

¹ Although when he took office Thapa declared that additional laws were not required to manage security in the country, in the last days of his administration he introduced the amendment.

² The tenures of the various coalition governments mentioned above are as follows: 10 March to 4 October 1997: RPP/NSP/UML coalition under premiership of Lokendra Bahadur Chand (RPP); 6 October 1997 to 10 April 1998: RPP/NC coalition under premiership of Surya Bahadur Thapa (RPP); 12 April to 21 December 1998: minority NC government under premiership of Girija Prasad Koirala (coalition with CPN(ML) from 26 August to 10 December); 23 December 1998 until results of pending 3 and 17 May 1999 elections: NC/NSP/UML coalition under premiership of Girija Prasad Koirala (NC). The government under which the Anti-Terrorist Act was originally written and circulated to parliament was the RPP/NSP/NC coalition under the premiership of Sher Bahadur Deuba (NC) which held power from 11 September 1995 to 6 March, 1997. RPP = Rastriya Prajatantra Party, the party of the former panches (which later split into RPP under Thapa and RPP(Chand)); NSP = Nepal Sadbhavana Party, a Tarai-based regional communalist party; NC = Nepali Congress, UML = Communist Party of Nepal (United Marxist-Leninist); ML = Communist Party of Nepal (Marxist Leninist) formed by a faction that split from UML after the NC/NSP/UML coalition government.

ML is led by Bam Dev Gautam who had been the Home Minister and Vice-Prime Minister representing UML in the Chand-led coalition of 1997 and the most vociferous government spokesman for passage of the proposed Anti-Terrorist Act.

³ In this article, while mention will be made of the proposed amendment and the campaign against it, the primary focus is the A-T Act and the campaign against it, for I am more concerned to bring out the dynamics at work than to detail each and every event. Protesters generally understood the amendment effort to be an attempt to slip through effective passage of the essence of the A-T Bill in a form that would escape public notice and/or be more difficult to rally opposition to (due to its brevity and the fact that it was "merely" an amendment to an existing law). It was also seen as a tacit recognition of something the government vehemently denied during the protest against the original A-T act: that current law already contained extensive powers for suppression of protest, armed or otherwise. The amendment effort can be understood as a logical next step on the part of the government, one that evinced a continuation of the dynamics discussed here. The text of the proposed amendment is given in Appendix E.

told representatives of the Peace Society that Mrs. Budha who was arrested along with her two year old daughter while she was working in her animal shed on the afternoon of the previous day, was incarcerated in the Mirul police post in a naked condition. Jan Bahadur Pun (a mute) who was working with Mrs. Budha was also shot to death. The economic condition of Jan Bahadur Pun of Mirul VDC-5, Tutu, was very poor. Although the police described this incident as a two-way clash, no grounds are evident for believing this claim. No weapons were recovered from the deceased. On the side of those killed there were only 2 people (excepting the small child). No postmortems were conducted and the corpses were not handed over to the relatives or villagers. The corpses were cremated by the police where the shootings had occurred. The villagers saw the cremations take place. During meetings of Peace Society representatives with the Mirul VDC Chairman, various employees and villages, the villages described themselves as terrified and terrorized after this incident. After the murder of Mrs. Budha the police dropped her 2 year old children off at her house (HRPS 1997)

In Sakla, Jajarkot District, as many as nine civilians including two women were deliberately killed by police during a cultural program at the local primary school on 6 June 1998. At around 5 am, a group of 40 to 50 policemen led by an Inspector from the Area Police Office surrounded the school and started shooting randomly at people watching religious dances in the compound. A woman, Mishri Rawal, who had alerted the onlookers to the police presence, was first to be shot. Other villagers who were killed in the police firing include Mohan Rokaya, a primary school teacher, Prithvi Bahadur Khadka, Gorakh Bahadur Shahi, Hari Narayan Thakur, and Tek Jung Shah. A fact-finding mission by a group of local human rights groups was told by the local authorities that the police operations were being directed from the capital and that they were not able to comment on the incident (Amnesty International 1999a).⁴

⁴ Three points should be noted about these and other human rights reports: i) they contain many such accounts as well as reports of widespread torture under incarceration; ii) they also contain some reports of grisly killings of apparently innocent village residents by the CPN (Maoist); iii) while the meanings and realities behind available numbers in such a situation are notoriously difficult to interpret, in most periods human rights reports give a higher number of killings

Given the continuation of such atrocities, was the campaign against the A-T Act, then, a pointless exercise? Judged narrowly in terms of its immediate impact upon human rights violations, it might appear so. However, viewed in the context of the much longer-term struggles for a polity that respects its citizens, which have been waged from the days of the Rana regime to the present, it appears in a different light, as a necessary intervention at a critical juncture.

Faced with protest, the government presented the A-T Act as narrowly intended to equip it to preserve "peace and security" in the context of the "People's War" declared by CPN (Maoist) in February 1996. Opponents pointed out that the language, the content and the intended permanency of the bill belied those claims. They set the Act in the context of the years since the People's Movement of 1990 and asked what shadow of a parliamentary democracy could remain once the government acquired such draconian powers? Their answer was - none. Thus the broad and unifying terms in which the struggle was waged were those of protecting the "limited rights"⁵ acquired through the People's Movement of 1990.

by police than CPN (Maoist), including in the Sera Kilo 2 period by a factor of 10 according to the government's own figures. Moreover, a reading these reports together with government, CPN(Maoist) and other sources indicates that it is in keeping with CPN(Maoist) policy to acknowledge the killings it commits while the government has interests in covering up or attributing to others a number of those its forces commits. In situations of guerrilla struggle it is also common for other rival political groups and even local village factions to engage in killings then attributed to the guerrilla group (e.g. Paul and Demarest 1988 for a detailed case). Hence all numbers need to be treated with caution and carefully evaluated. This article, however, concentrates not on the CPN(Maoist)/government struggle itself, but rather on government efforts to pass legislation that would "legitimate" abuses from its side and make it yet more difficult for citizens to resist and protest such abuses. As will be seen below, one government tactic in the face of protest of such violations has been to label all protesters Maoist supporters. During the campaign against the A-T Act protesters - many of whom were and are also vocal critics of reported instances of Maoist killings of the village poor they claim to be fighting for - very clearly rejected this equation. The campaign against the A-T Act argued that the government of a constitutional democracy has an obligation to act in accord with the constitution, democratic norms, and international human rights law even while attempting to meet an armed internal challenge. This article takes the same view.

⁵ The "limited democratic rights achieved by the People's Movement" is a ubiquitous phrase in Nepali

This article gives a preliminary and partial overview of the campaign against the A-T Act. I attempt to give readers some sense of the political climate in which the Act was proposed, the actions taken against it and the reasons for that widespread protest, and finally government reactions during and after the protest campaign. The proposal of the A-T Act and the campaign against it was but a moment in a sharpening struggle between autocracy and democracy. Hence it seems worthwhile to try to examine this marked moment of united protest for the lessons it may hold about where that struggle may be heading.

The Stakes

The fundamental argument made against the proposed A-T Act was that the very legitimacy of the current Nepali state - a parliamentary democracy under a constitutional monarchy - was at stake. The seriousness and centrality of this argument cannot be overestimated for it explains a good deal both about how such a broad-based coalition against passage could coalesce in a sharply divided political environment,⁶ and about state reactions to the protests.

The essential argument ran as follows: A given state form cannot preserve itself by means that violate the fundamental principles it purports to embody. If it makes claims to be a democratic state, it may through undemocratic means preserve its power by mainforce for some time, but it thereby, and inevitably, loses its legitimacy.

While recognizing the right of an elected government to counter attempts to overthrow it and its duty to attempt to provide a secure environment for citizens, protesters demanded that such efforts remain in accord with the constitution and with human rights instruments to which Nepal is a signatory.⁷ The proposed A-T, they pointed out in detail and repeatedly, violated both (see, for example, Appendix B). As an appeal to the parliament put it,

it is a shameful irony that leaders of the 1990 Peoples' Movement professing pluralist democracy as well as the parliamentarians elected from amidst them should even contemplate such an undemocratic Bill. This

political discourse today, and for good reason.

⁶ The protest against the A-T Act is among the most widespread (geographically) and most unitary (across classes and political orientations) peaceful movement that has taken place in Nepal since 1990. It would be a worthwhile exercise to compare it along these parameters, with the Tanakpur, Arun III, Mahakali and Darchula struggles.

⁷ In fact, opponents strongly rejected the specious government argument that the A-T Act had anything to do with providing a "secure" environment for citizens. They labeled it plainly as a blank check for state terrorism.

proposed legislation should be seen as an effort to push Nepali society away from pluralist democracy towards an autocratic police state. Such a regressive act is but one expression among cumulative steps to curtail the achievements of democracy written into the present Constitution as well as an ominous harbinger of mortal blows against the democratic forces within the country (MSDR 1997b; text in full in Appendix E).

It is easy to see how this basic position was one around which a wide array of individuals and organizations could unite. From those who put their political faith in parliamentary democracy to those who agree with the CPN (Maoist) that a People's Democratic Republic is the right state formation for Nepal, but who don't agree that party's "People's War", as currently being waged, will achieve it, people could join together on this basis. Moreover, the growing number of liberal-minded middle-class supporters of "civil society" that the post-andolan years have spawned, who are not firmly oriented to any ideological position regarding the form of the state, could also recognize in the A-T Act an autocracy diametrically opposed to the civil liberties they value.

The government's primary response to this basic challenge was to darkly insinuate that anyone who opposed the A-T Act was *thereby* expressing unqualified support for the CPN (Maoist) "People's War". The threat was clear, and familiar to anyone who had lived through the Panchayat era during which opposition to any government act was labeled "anti-nationalist" and left one prone to arrest. This tactic will also be familiar to readers who have studied other situations in which a state has tried to meet an armed internal challenge by arming itself with blanket repressive powers: the tactics of intimidation generally accompany efforts to institutionalize those powers, after which protest can be silenced by harsher means (cf. Des Chene 1997).

It is, I believe, because the stakes were so fundamental that protest against the A-T Act was as widespread and as vociferous as it was. Most opponents recognized very well that the government was already exercising the bulk of the powers that the Act would formally grant to it,⁸ and that it was unlikely to cease and desist even if the Act was defeated (as has been borne out in practice). What was at stake, as a practical

⁸ Cf. NSC and INHURED International 1997 for a detailed accounting of the extensive powers of arrest, incarceration, search and seizure, etc., inscribed in laws inherited from the Panchayat era. Although a number of these laws or their provisions may be technically illegal themselves (since the Constitution of 1991 provides that any law contrary to it is automatically abrogated effective one year from promulgation of the constitution), they continued to be utilized.

matter, in the view of opponents, was not whether the population would become prone to arbitrary arrest and detention, search and seizure without warrant, extra-judicial execution, etc., but only whether it would become yet more vulnerable to such acts. Thus as opponents defined it, the core of the fight over the A-T Act was whether, under cover of 'democracy', the government could "legitimize" such conduct through an act that, following upon the years of corruption and unprincipled politics, would finally bankrupt the dwindling fund of trust placed in its keeping by the people at the end of the People's Movement.

The Substance of the "Anti"-Terrorist Act

The full text of the proposed Act is given in Appendix A so that readers can see for themselves precisely what was proposed. Here I will just point out some of the implications of its deceptively bloodless legal language.

The language of the A-T Act closely follows that of the Destructive Crime (Special Control and Punishment) Act, 2042 v.s., which was passed into law after bombs were exploded in Kathmandu, Pokhara and some places in the Tarai in that year. That Act was utilized (along with the Public Security Act) to arrest and hold thousands across the country, and to bring to an end the widespread strikes and protests against the Panchayat that had been taking place prior to the bombings.⁹ It was revoked only after the restoration of multi-party politics and the conversion to a constitutional monarchy in 1990.

It is necessary to recall the history of the use of this and other laws to abrogate basic civil rights, detain people for long periods without charge and/or on the vaguest of "suspicions", to render expression of disapproval of government policy or conduct a crime, and generally to silence the population in the name of preserving peace and security, in order to appreciate the potential implications of the A-T Act. It is also sometimes necessary to consider together disparate portions of the Act in order to see their full implications.¹⁰ Here I direct readers' attention to just a few key elements:

⁹ Notably, the 2042 v.s. act was passed into law during the premiership of Lokendra Bahadur Chand, who was again Prime Minister when the A-T bill was proposed in 2054 v.s. There is a much longer history of repressive legislation being passed or amended at moments when the government has faced organized challenges: 2009 v.s., 2012 v.s., 2018 v.s., 2036 v.s., 2042 v.s., 2046 v.s. and the aborted attempts of 2054 and 2055 v.s.

¹⁰ The point is not that the government would necessarily go to every extreme made possible by the language of the Act - that is unknowable. The point is that it could do so while remaining within the law were the Act to be passed.

1) What can be treated as a "terrorist and destructive act":

(a) In 2 (a) (1) of the definitions of this law, any act that would bring "harm" to the "security, law and order or system of governance" of Nepal or any part of Nepal by use of weapons is a terrorist act. But attached to the list of weapons is the phrase "or any other instrument or thing". Moreover in 2 (a) (2) it is added that "without using those means" and "using any other instrument, material or means" an act may be defined as terrorist. In 2(b) after listing pistols and revolvers, weapons are defined vaguely to include "any other similar type of means or machine", "dangerous weapons with or without a blade" and "sticks and stones". We thus arrive at the situation in which a young person carrying a slingshot, an old person carrying a walking stick, or a farmer heading to fields or forests with a sickle can be included in this definition. Should such a person in any way challenge any security personnel or, in the mind of that security personnel appear to be threatening to do so, or just 'formulating a plan' to do so, that can be defined as obstruction of the "security" or "law and order" and the person thus becomes subject to treatment as a "terrorist".

(b) In 2(h) anyone who engages in "spread of false propaganda" is defined as a terrorist, and in 3(2) the "spread of propaganda" is added to the definition of terrorist and destructive crime. In both cases, "attempting" to do so is equally defined as a terrorist act, and in 3(2) giving advice to others, organizing others, or intending to perform such an act, or sheltering anyone who is doing any of these things, also becomes defined as a terrorist act. Propaganda is nowhere defined, and thus becomes anything that, in the view of the authorities would, according to 2 (a) (1) bring "harm" to the "security, law and order or system of governance" or, according to 2 (4), intentionally create "an atmosphere of fear or terror in public life". Thus "propaganda" effectively includes any statement, claim or interpretation with which the authorities disagree, any statement that might worry the public (create an atmosphere of "fear"), etc. The right of citizens to voice their opinions, to disagree with state policies and the course of governance, and to comment on the conduct of government are completely abrogated by these provisions. For example, the statements made about the dangers of the proposed Anti-Terrorist Act, could clearly have been defined as a "terrorist act" had this bill already been law, not to mention observations that the Kathmandu Valley has an acute water shortage or that people are starving in Jumla. Journalists and other writers can easily be defined as terrorists under these provisions, and under 9(2) any "means" used to create or distribute "propaganda" can be confiscated: this means press equipment, computers, faxes, telephones, paper stock, or for that matter pen and ink. Given Nepal's long history of press censorship, closure of newspapers, seizure of press equipment, and

incarceration of journalists, it does not seem far-fetched to anticipate that those mechanisms could quickly be reactivated.¹¹

(c) Throughout the Act, while defining terrorist acts and terrorists, the language includes not just actual performance of the acts so defined, but planning or attempting to do so or, *in the opinion of security personnel*, planning or attempting to do so. It also includes aiding anyone, or sheltering anyone who performs, attempts to perform or plans to perform such an act - or who, *in the opinion of security personnel*, are planning such an act. The inclusion of "suspicion" of terrorists acts and "suspicion" of planning terrorist acts gives the state *carte blanche* to apply the provisions of this act to anyone it chooses. Moreover, by the provision of 15(1), security personnel have only to state that they acted in "good faith" in order to be exempt from any punishment for abuses perpetrated in the name of this Act. So, for example, a security officer has simply to state that, in good faith, they thought a person was (recalling the definition of weapons), armed (2(a)(1)), or thought they had intentions against the interests of law and order (2(a)(1); 2(4)), and they thought they might attempt to flee, or they judged that they would not be able to arrest them (5(e)), and therefore they shot and killed them, in order to be exempt from punishment for the killing of anyone. Thus there is no recourse against blatant abuses of the powers vested in security personnel under this Act, even if clearly used against completely innocent citizens, and even if used to murder such citizens.

2) What can be done to a "terrorist" or "suspected terrorist"?

(a) Keeping in mind the loose definitions of "terrorist" explained above, and the extension of this law to "suspected" individuals without any requirement to show a basis for such suspicion, the following rights are given to anyone the state appoints as a "security officer":

- i) arrest without warrant (5(a))
- ii) search without warrant or notice, of any person in any place, and of any place at any time (5(b)).
- iii) to kill anyone who "hinders" arrest or search as described in i) and ii) (5(c))
- iv) to kill anyone who "appears to be fleeing or seeking to flee or is in a situation that prevents arrest" who, in the judgment of security personnel is committing or has committed a terrorist act.

It should be remembered that these provisions can be applied to journalists whose writings are judged to be

¹¹ Indeed, subsequent to the non-passage of the A-T act, arrests of journalists, seizures of newspapers, searches of newspaper offices and seizure of equipment and documents have markedly increased.

propaganda, people suspected of sheltering people suspected of being terrorists, people engaged in peaceful protest on the street, and rural farm workers who run or look like they might do so, when they encounter armed security personnel on a mountain or forest path.

(b) If someone is arrested rather than summarily executed, they are subject to:

i) after being arrested without warrant, to be held for up to 90 days "for investigation" (12(4))[sic]

ii) when brought to trial, to be tried not in regular courts, but in special courts constituted for this purpose under the provisions of the "Special Court Law, 2031" (10(3)). Such courts, under which defendants have fewer rights than in a regular court, are not allowed under the Constitution of 1990.¹²

iii) if found to have taken life, to have caused life to be taken, or to have conspired to do so, confiscation of all property and life imprisonment (8(1)). Here one should recall the standards of proof, which include unsubstantiated suspicion, by which a person could be accused under the A-T Act, for such crimes.

iv) If life was not taken, life imprisonment

v) if "propaganda is caused to be carried out" or shelter given to someone causing propaganda to be carried out, five to 10 years imprisonment (8(3))

The provisions for warrantless arrest and 90 day imprisonment without charge, besides being a violation of basic rights, gives ample scope for torture. Recalling the broad definitions under which people can be arrested, it gives the state full rights to terrorize the public. The broad definitions of "terrorist act", together with the above language of "conspiracy" give broad rights to incarcerate for life those who disagree with state policies, whether or not they have engaged in any kind of violent opposition to those policies. The effective inclusion of any form of dissenting speech under "propaganda" allows for incarceration of any citizen for up to 10 years.

There are many other draconian measures written into the A-T: I draw your attention in particular to the rights vested in security personnel (defined in 2(g)) under Clause 5, to the application of this law outside Nepal (1(3) and Clause 4, to the rights to wire-tapping etc. under Clause 13, and to confiscation of means of communication under 9(2).

Political Contexts of the "Anti-Terrorist" Act

How, you may well might ask, did a government of one of the main forces of the People's Movement (Nepali Congress) come to write such an Act? And how did a government including another of the main forces

¹² This appears to be one instance in which laws that are technically illegal according to the constitution nevertheless remain on the books and in effect.

of the People's Movement (CPN (UML)) - even in coalition with former panches - fall so far as to attempt to pass it into law?¹³ It may be many years before that question can be answered with precision (although an examination of the history of these parties certainly provides a general explanation). Meantime, brief consideration of three contexts that opponents of the Act considered critical will assist readers to understand the content and extent of protest, whether or not these points prove, in the longer run, to be wholly accurate or to fully explain the behavior of the government to which opponents were responding.

I. Government Reactions to the CPN (Maoist) "People's War"

No one opposing the A-T Act denied that the immediate occasion for its introduction was the "People's War" of the CPN (Maoist). What was widely disputed (besides the legitimacy and necessity of using such powers to counter internal armed struggle), was the government claim that this was the *single* reason for its introduction. In the following two sub-sections I describe some of the other factors that various opponents of the Act saw as lying behind the proposed A-T Act. Here I concentrate on aspects of earlier government responses to the CPN (Maoist) that caused people to dismiss out of hand the government claim that it was motivated solely by the desire to secure "peace and security for the people" in the context of the "People's War".

It was not forgotten that the first violent campaign launched by the government against UPF (Bhattarai Group)¹⁴ came over a year prior to the CPN (Maoist) declaration of the "People's War". In November 1994, in the run-up to the elections, a police operation dubbed 'Operation Romeo' was launched in Rolpa against supporters of the UPF (Bhattarai Group). Besides setting up additional police posts, greatly increasing the number of police assigned there, and creating a special strike force (which reportedly remains in place), that operation was characterized by "mass arrests, false charges, and torture while incarcerated" (HRPS 1997).

Second, it was noted that the bill was presented at a time when there had been much parliamentary discussion of whether the CPN (Maoist) "People's War" represented a terrorist activity or a political problem. The official government stance was that it was a political problem and thus required a political solution.¹⁵ Indeed the government had called for

negotiations and recently given MP Padma Ratna Tuladhar the task of attempting to arrange for talks.¹⁶ Government discourse centered on two terms: dealing with the "Maoist problem" as a "political problem", and "bringing the Maoists into the mainstream". The way in which efforts had previously been made to bring the CPN (Maoist) "into the mainstream" did not inspire faith in the government's seriousness in that regard. As a human rights report put it,

The actions taken under Operation Romeo were an extreme example of collective and arbitrary arrest in which those arrested were not presented before the proper authority within 24 hours in accord with the constitution of the Kingdom of Nepal. Among the arrest, against many no specific charge was made. In the name of bringing the supporters of UPF to the "national mainstream", those who were arrested were jailed in groups and given training in skill development, forest preservation and other such subjects, while legally no convictions were made. (HRPS 1997)

Nor did the mass arrests, torture under detention and extra-judicial executions documented by human rights organizations (e.g., Amnesty International 1998b,c; 1999a,b)¹⁷ since the commencement of the People's War inspire faith in either the government's seriousness about negotiations or in how it would utilize the A-T Act.

Compounding such doubt was the failure of the government to form the Human Rights Commission that it had been under legal obligation to create since 1996. Rather than forming such a commission, the government had instead formed a series of task forces, ostensibly to prepare for constitution of the commission. But governmental manipulation of these task forces¹⁸ suggested that instead they were intended to prevent creation of a commission and to provide

different government officials. This had long been the case, but increasingly as the campaign went on, one saw public statements by high officials labeling the CPN (Maoist) "terrorist".

¹⁶ Tuladhar himself, however, stressed in published interviews that the evident lack of any seriousness about negotiations on the part of the government rendered this exercise pointless.

¹⁷ Such abuses were also reported in detail in the Nepali press, though generally not in the government media or the papers of the parties in power. A fact-finding mission carried out at the request of the Parliamentary Commission on Human Rights and Foreign Affairs had also documented such abuses but its report was not made public. After the defeat of the Amendment to the Anti-State Crimes Act one of the investigators for that Commission, Gopal Sivakoti 'Chintan' of Nepal Concern Society and INHURED International was arrested and the documents from his investigation were confiscated.

¹⁸ For details see HRPS 1997.

¹³ It should be noted that just months before when the NC coalition government had attempted to introduce the original bill, CPN (UML) had expressed its disgust and strong opposition.

¹⁴ The United People's Front (Bhattarai Group) was the then public political front of the CPN (Maoist).

¹⁵ During the course of the campaign against the A-T Act contradictory statements on this point were made by

legitimization for the redefinition of CPN (Maoist) activities as a terrorist problem, clearing the way for actions such as bringing the A-T Act into law and exercising its powers. The Human Rights Task force of the parliament at the time of the controversy over the Act was headed by PM Padma Ratna Tuladhar. Immediately upon formation of the Movement to Save Democratic Rights he resigned in protest of the A-T bill along with 7 other members of this 11 member task force.

II. Power Politics

It is no secret that post-1990 parliamentary politics have been characterized by jockeying for raw power and the rapid accumulation of wealth before the next coalition takes over. Even the parties that have been engaged in this regularly declare that it is so. Governments have been so far from being founded on ideological principles that we have witnessed almost every possible coalition of forces, including the bizarre spectre of a joint government of the former panches and the CPN (UML). It is no surprise, under such circumstances, that government positions will present major contradictions.

One of the most puzzling aspects of the efforts to pass the A-T bill was that Bam Dev Gautam (then of the CPN (UML)) in his capacity as Home Minister and Vice-Prime Minister was the most vocal and insistent government spokesperson in favor of its passage. Only months before, when an NC-led coalition had put the Act forward, his party had expressed its disgust and strong opposition. Initially, as Gautam campaigned for passage, General Secretary of the CPN (UML), Madhav Nepal, said that there was agreement in principle within the party on this position. After intellectuals of other left parties, and many UML parliamentarians¹⁹ and workers expressed opposition, the party leadership changed its tune, suggested perhaps the Act was not immediately required and finally decided not to push for passage in its current form and in that session of parliament (Shrestha 2054 v.s.). Nevertheless, Bam Dev Gautam continued to heavily pressure for and publicly speak in favor of passage to the bitter end.²⁰ Many

¹⁹ While many UML parliamentarians may have expressed disagreement within the party or privately, very few took a public stand against the A-T Act.

²⁰ Recently, while campaigning for the 1999 general elections Gautam explained that in his push for passage he was just obeying the orders of his party leadership (Svaar 2055 v.s.). In this claim he fails to explain his continued support for the bill after his party shifted its position. Either he conveniently glossed over that second phase of his support or CPN (UML)'s stated change of position was not a genuine one. In the current climate of allegations and enmity between CPN (UML) and CPN (ML) it does not seem possible for anyone not privy to the highest levels of party machinations to assess these different possibilities.

opponents of the Act saw in this situation evidence that more powerful forces than the political parties were behind the push for passage, namely the police, the army and the palace (e.g. Shrestha 2054 v.s.).²¹

Indeed, some saw the A-T Act, were it to become law, as marking the beginning of dual rule:²² royal rule via the police and army, and Singha Darbar rule via the government and parliament, pointing out that the promulgation of the constitution had been just a first step in giving to the monarchy a constitutional role in the balance of power (Shrestha 2054 v.s.). MP Padma Ratna Tuladhar, after meetings with government officials, also said that he was given to understand that the police wanted the A-T Act. And former Supreme Court Justice Bishwanath Upadhyay similarly pointed out the "intense politicization of the police" as one key factor behind the Act (Upadhyay 2054 v.s.).

III. The "India Factor"

Where there is political controversy in Nepal, mention of the "hand of India" is never far behind. Foreign analysts tend to dismiss the heavy emphasis placed on Indian interference as an explanation for the course of Nepali politics (Indian ones coyly, Western ones skeptically). However, as events recede into history and more becomes publicly known about them (e.g. the infamous "Delhi Compromise" of 1951), the heavy "hand of India" often becomes clearly visible. Nor do blatantly public attempts to ride roughshod over Nepali interests (as in negotiations over Darchula, Tarai border disputes, various hydropower agreements etc.) give grounds for assuming that attempts to shape the course of Nepali politics according to Indian interests do not take place behind the scenes as well. Too many knowledgeable people can give detailed examples of such efforts to casually dismiss all of them as "paranoia". The useful questions would rather seem to be about in which cases and to what degree Indian influence has most affected the course of Nepali politics. Unfortunately, hard evidence will rest largely with those who have interests in its non-divulgence.

²¹ Shrestha quotes an unnamed high level source in the CPN (UML) as saying that heavy pressure was being placed upon Gautam by the army and police and that, in his lust to hold onto the Home Minister's seat, he was working all out in favor of passage. The same source claimed that the draft of the Act was "born" in police HQ and is a plot to bring about a law that will kill off UML by its own hand. In this view, Gautam was a "simpleton being used by clever forces". One should recall the deep rivalries within CPN(UML) and the subsequent split with Gautam becoming head of the rival CPN (ML) in considering this explanation.

²² Others took the view that such a dual rule already existed, seeing in the A-T Act the likelihood of a further tilt toward the palace/army/police side.

In the case of the A-T Act, it was pointed out that India for some time had been periodically making public and pointed complaints (reported in the Nepali press), claiming that Nepali soil was being used by "terrorists" antithetical to India. Such allegations included mention of Bodo, Kashmiri, Sikh, and Pakistani "terrorists". While precisely what pressure was placed on Nepali governments to control these alleged activities is not publicly known, the A-T Act would certainly have been in keeping with the desires of India in this regard. Moreover, in the case of allegations of Pakistani "terrorists" using Nepali soil, Article 2 and the stronger Point 1 of the accompanying letter of the 1950 Nepal-India Peace and Friendship Treaty could be utilized by India to bring pressure to pass "anti-terrorist" legislation.²³

Secondly it was pointed out that renewal of India's similar Terrorist and Destructive Act legislation (TADA) had only recently been defeated and efforts to replace that legislation at the regional level (cf. AIPSG 1997) would be bolstered by similar legislation across the border. Thirdly, Indian President Gujral's visit to Nepal and approval of the Act by the Council of Ministers just weeks later were widely seen in the left press as closely connected events. While in Nepal Gujral had reiterated India's expectation that Nepal would find means to prevent terrorists from working against Indian interests from Nepali soil. Although the government consistently claimed that the A-T Act was intended for use only against CPN (Maoist) forces, it was pointed out that the India factor made sense of its absolutely generic language and its permanent character.²⁴

Arguments against Passage

Several arguments made against passage have already been mentioned. Here I will just set out the primary ones in point form, from the broadest to most specific. It was held by various opponents that the A-T Act:

- represented treachery against the spirit and sacrifice of the People's Movement
- a democratic polity cannot be preserved by undemocratic and autocratic means²⁵

²³ For the text of the 1950 Treaty and accompanying letter in English see Appadorai 1985. For both texts in Nepali see CPN (Unity Centre) 1995.

²⁴ The other widespread reading of the non-specific language and permanent character of the Act was that it was intended not just as an instrument to be used against armed insurgents, but broadly as a tool to eliminate the left in Nepal.

²⁵ This point was made from at least two distinct political viewpoints. Some made this argument in an effort to pressure the government to live up to its legacy. Others argued that the A-T Act was one more evidence of the intrinsically undemocratic nature of the

- violated constitutional rights to security, freedom of expression, right of congregation and right not to be persecuted on the basis of political beliefs
- violated international human rights covenants to which Nepal is signatory (see Appendix B)
- was unnecessary because, contrary to government claims, there are more than enough powers inscribed in current law to deal with any act of violence or terror
- was a step in the wrong direction: the Black Laws of the Panchayat era that remain extant should be revoked, not revived and added to
- was most fundamentally an effort to legitimize as 'democratic' the rule of autocratic forces which were already, without its passage, widely exercising the powers it would "grant".
- would be widely applied, as evidenced by pattern of abuse of innocent civilians unrelated to the CPN(Maoist) already occurring
- was illegitimate as an instrument to be used against CPN (Maoist) cadres as well, to whom the current state is obliged to accord the rights outlined in the Geneva conventions regarding internal conflict

Actions against Passage

Warning about the A-T Act was first sounded, to my knowledge, in late January 1997 when the original text (of the Deuba-led government) was published in a weekly newspaper (*Jan Ekata* 14 Magh, 2053/27 January, 1997). At that time, however, although the bill was circulated for study by parliamentarians, it was not formally introduced into parliament and opposition against it did not coalesce. When the bill was revived by the Rastriya Prajatantra Party/CPN (UML) coalition during the following parliamentary session, this weekly once again acquired and published the full revised text (*Jan Ekata* 20 Saun 2054/4 August, 1997) [See Appendix A for this version of the A-T Act]. The Council of Ministers had approved the bill in July, and thus it was due to be introduced to parliament for formal debate and a vote. This time action was swift. What follows concentrates on the activities of the two most prominent and visible streams of protest - that coordinated by the Movement to Save Democratic Rights, and that orchestrated by a United Front of left political parties.²⁶

current state.

²⁶ Other organizations were also active in protest such as the Nepal Bar Association and other lawyers' organizations. Some human rights organizations worked independently against the A-T Act, although many coordinated their activities through the MSRDR. See for example the statement by public health professionals (PHECT 1997). By concentrating on these two streams I do not intend to imply that no one else raised their voices. Indeed, part of the effectiveness of the protest

I. Movement to Save Democratic Rights

On 22 Saun (6 August) *Mulyankan* magazine, the widest circulation publication on progressive politics and culture in the country, organized a day-long informational and organizational session at the APROX hall in Kathmandu, just across the road from Singha Darbar where, according to government plans, the fate of the bill would be decided. In a hall packed to overflowing speaker after speaker denounced the bill, lawyers, constitutional experts, and human rights activists itemized its violations of the constitution, international treaty obligations and fundamental rights. Strikingly, the roster of speakers included not only independents and individuals from opposition parties, but also several Nepali Congress stalwarts, including former NC speaker of the house Damannath Dhungana, and even a few CPN(UML) supporters. All speakers urged the necessity to overcome differences and unitedly fight this fundamental challenge to the "limited rights" achieved by the People's Movement of 1990.

Out of this meeting was born the *Prajatantrik Adhikar Jogau Andolan* (Movement to Save Democratic Rights, hereafter referred to as MSDR). A committee of 16 with independent MP Padma Ratna Tuladhar as its coordinator was constituted to launch a national and international campaign against passage of the bill (See Appendix E for list of committee members. Cf. MSDR 1997a). MSDR became an effective coordinating body through which many different professional organizations and individuals organized protests and informational forums for the public, staged street theatre, poetry and musical events targeted against the A-T Act, and issued statements to the press about the course of the movement. Many involved in MSDR were also active in arguing against the Act in print, making an effort to place articles in a wide variety of publications so as to reach audiences across the political spectrum. Headed by a prominent MP and a former Speaker of the House, and including many prominent intellectuals, the MSDR committee had enough clout to arrange what the general public could not: meetings with the Prime Minister, Home Minister, heads of the parliamentary parties, and with parliamentarians. Throughout the protest campaign MSDR Committee members met many times with such persons. Thus the MSDR campaign had two distinct though interrelated aspects: a public awareness campaign and a pressure campaign directed at political leaders.

II. "4 Left Group"/"9 Left Group"

Within a few days of the formation of MSDR, four left political parties announced a 40 day protest program. While other issues were also included, the A-T

was that it issued from so many quarters at once. There were also widespread protests outside the Kathmandu Valley about which, unfortunately, I am able to include only very limited information.

Act figured prominently and was arguably a decisive factor allowing them to organize a united struggle at this juncture. Within two weeks, five other left parties and organizations joined in this protest program and the "4 Left Group" became the "9 Left Group". This coalition brought to the campaign against the A-T Act its collective organizational experience in leading street protests, the manpower of established political parties as well as the membership of their various affiliated youth, trade union and cultural organizations. The 9 Left Group organized public meetings in towns across the country as well as within the valley, held frequent protest marches, include many night-time torchlit marches, and organized a number of *band* programs, within the valley and countrywide. Party papers devoted much of their space to reporting on the campaign (including protests of organizations unaffiliated with any of the members of the 9 Left), and to analyzing the government's agenda in putting forth the A-T Act. Leaders of these political parties issued regular public statements and ones directed to the leadership of the parliamentary parties, and met with governmental and parliamentary party leaders to argue against the Act.²⁷

²⁷ In the subsequent campaign against the Amendment to the Anti-State Crimes and Punishment Act, 2046 v.s., the 9 Left briefly became the "8 Left" when the National Mass Movement Coordination Committee left the coalition. But it again became the 9 Left when the new CPN (ML) -- under the leadership of Bam Dev Gautam -- joined the coalition. However, CPN (ML) strength was not in evidence during the street protests at that time, calling into question the genuineness of the CPN (ML) participation.

III. A Partial Chronology of Actions in Opposition to A-T Act²⁸

Saun/late July	Joint Declaration: Abolition of the Black Law presented to HMG and distributed to the press. Most signatories later part of MSDR (see Appendix D for full text)
	Meeting of representatives of National Democratic Front with Man Mohan Adhikari of CPN (UML), Taranath Ranabhat of NC and parliamentarian Ashakaji Bashukala to argue for withdrawal of the proposed A-T Act.
	Statement against A-T act by National Mass Movement Coordination Committee stating that in the name of suppressing the Maoist People's War the proposed Act would render worthless the fundamental rights of the people acquired through the constitution
	Statement by Nepal Bar Association demanding provision of information and opportunity for debate among public prior to introduction of A-T Act into parliament
17 Saun/1 Aug	Seminar held in Chitwan at which representatives of United People's Front (Serchan), Liberation Society, Nepal Human Rights Association, Peace Society, People's Rights Concern Campaign, Nepal Intellectuals' Association, National People's Front, a member of CPN (UML) as well as individual writers, teachers and lawyers called for withdrawal of the proposed A-T Act. A press statement signed by 35 lawyers, doctors, human rights activists, teachers and political workers issued calling for all to work in their own areas to oppose the bill. 17 member pressure group to oppose the bill formed.
18 Saun/2 Aug	Letter protesting A-T Act from Dr. Mathura Shrestha to CPN (UML) General Secretary, subsequently published in some CPN (UML) newspapers ²⁹
19 Saun/3 Aug	Statement by General Secretary of CPN (Masal) arguing that the Act amounts to a conspiracy against the existing limited political freedoms of the people, thus necessary to raise a widespread united movement against it
19 Saun/3 Aug	Discussion forum organized by National Concern Society at which claimed necessity of the A-T bill was argued against by lawyers, representatives of human rights organizations and parliamentarians
20 Saun/4 Aug	Proposed A-T Act published in <i>Jan Ekata</i> weekly (see Appendix A)
21 Saun/5 Aug	General public meeting in Kirtipur organized by People's Awareness Campaign for public debate of the A-T Act
22 Saun/6 Aug	Day long informational/organizational public meeting organized by Mulyankan Maasik. Movement to Save Democratic Rights formed
25 Saun/9 Aug	Appeal to Parliamentarians issued by MSDR (see Appendix E)
25 Saun/9 Aug	Statement against A-T Act by Public Health Concern Trust

²⁸ This list is by no means complete but will give readers a sense of the variety and extent of public opposition. Throughout the campaign against the A-T Act there was also a great deal of effort to inform the public of its contents and implications via the press. NC papers were strikingly limited coverage of the movement in opposition to the Act, as was the official government media. CPN (UML) papers also largely ignored the protests or put forward the allegations mentioned above against opponents, and/or argued for the A-T Act, with a few exceptions.

²⁹ The letter read as follows (my translation): "Mr. Madhav Nepal, If you pass the proposed Black Law, be warned, you will have to tread upon the corpses of thousands like me. This will be the greatest historical mistake and calamity. Therefore you must immediately issue a statement saying the Black Law will not be brought and beg forgiveness from the public for seeking to bring it [into law]. Dr. Mathura Prasad Shrestha." I thank Dr. Shrestha for providing me with a copy of his letter.

25 Saun/9 Aug	Leaders of CPN (Masal), CPN (Unity Center), Nepal Workers and Peasants Party and National Democratic Front hold press conference to announce united 40 day protest program as 4 Left Group ³⁰
25 Saun/9 Aug	Citizen's Campaign for the Consolidation of Democracy, founded by former Supreme Court Justice Bishwanath Upadhyay protested against the Act to the Prime Minister and speaker of the house
26 Saun/10 Aug	Joint statement against A-T Act by Nepal Communist League, National Mass Movement Coordination Committee, Nepal Saamyabadi Party, NCP (United), NCP (Marxist)
26 Saun/10 Aug	Press release against A-T Act by Baburam Bhattarai of CPN (Maoist)
27 Saun/11 Aug	International Joint Statement against A-T Act with 60+ signatures sent to Prime Minister, Home Minister, heads of parliamentary parties, and released to the press.
27 Saun/11 Aug	All Nepal Trade Union Organization, Kathmandu and Lalitpur branches issue a statement calling for their members to join in the 4 Left protest program
28 Saun/12 Aug	Protest march through Kathmandu organized by representatives of human rights organizations involved in MSDR
32 Saun/16 Aug	Statement issued by the Nepal Progressive Teachers' Association calling the proposed A-T Act contrary to the very essence of the constitution and declaring its entrance into the movement opposing it
1 Bhadau/17 Aug	Valley <i>band</i> (closure/shut down) called by 4 Left Group. Protest marches in the 3 main cities. At least 100 arrested in Kathmandu including political party leaders and a member of parliament. Lathi charges against marches at various locations. Public rally at the Tundikhel into the evening.
3 Bhadau/19 Aug	Meeting of MSDR Committee members with parliamentarians of both parties (i.e. NC and UML) (one of numerous meetings)
8 Bhadau/24 Aug	Press conference of 4 Left Group and representatives of Nepal Communist League, National Mass Movement Coordination Committee, Nepal Saamyabadi Party, NCP (United), NCP (Marxist) announces entry of latter 5 organizations into the 40 day protest program; 4 Left Group becomes 9 Left Group.
9 Bhadau/25 Aug	Writers and Artists Unity Committee formed under MSRD
10 Bhadau/26 Aug	Meeting against A-T Act in Butwal organized by 9 Left Group
11 Bhadau/27 Aug	Open Letter to Parliament against A-T Act issued by 9 Left Group
11 Bhadau/27 Aug	Statement in opposition to A-T Act signed by 135 writers and artists issued by Writers and Artists Unity Committee
12 Bhadau/28 Aug	Torchlight protest marches by 9 Left Group

³⁰ The 40 day protest program made 5 demands, the first of which was that the bill "plundering the limited rights acquired in the People's Movement" not be introduced into parliament. The other demands were: i) to rescind the recent price hikes in petroleum products, cooking gas and sugar and to control price increases in all sectors, ii) to end political corruption including tax-free vehicle importation for parliamentarians and other high officials and the rotating governmental fund, iii) to immediately order the Indian Army out of Darchula and retake encroached-upon Nepali territory, iv) to cancel the Seti Agreement, end plans to "sell" the Karnali and cancel all unequal treaties, including Mahakali. However, the A-T Act was made the most prominent element in the protest activities of the 9 Left Group.

12 Bhadau/28 Aug	Statement against A-T act from International Physicians for the Prevention of Nuclear War, sent to Prime Minister, Home Minister, and distributed to the press
13 Bhadau/29 Aug	Nepal <i>band</i> called by 9 Left Group. Besides the valley, protest marches, torchlight processions and public meetings against A-T Act in Janakpur, Sarlahi, Chautara, Narayangadh, Pokhara, Banepa, Sindhuli, Bardiya, Biratnagar, Mechi, Hetauda and Dhangadhi.
14 Bhadau/31 Aug	Protest March through Kathmandu by professional organizations including artists, writers, doctors, teachers, lawyers, ending in a public meeting at Bhadrakali. Organized by MSDR
15 Bhadau/1 Sept	Letter to Parliamentarians from Writers and Artists United Committee expressing opposition to A-T Act
17 Bhadau/1 Sept	Protest marches followed by public meetings organized by 9 Left Group in various towns around the country
20 Bhadau/5 Sept	Street theatre performances in Basantapur to raise public awareness A-T Act, organized by Writers and Artists United Committee of MSDR
22 Bhadau/7 Sept	Poetry recitation in Asan to raise public awareness A-T Act, organized by Writers and Artists United Committee of MSDR
24 Bhadau/9	Sept Satirical program to raise public awareness A-T Act, organized by Writers and Artists United Committee of MSDR
27 Bhadau/12 Sept	Appeal to Prime Minister issued by 9 Left Group
29 Bhadau/14 Sept	Discussion forum bringing together pro- and anti- A-T Act parliamentarians, journalists and party officials organized by Nepal Concern Society
1 Asoj/17 Sept	Countrywide torchlight protest program called by 9 Left Group
2-3 Asoj/18-19 Sept	Nepal <i>band</i> called by 9 Left Group

Trends after Non-Passage of the "Anti-Terrorist" Act

The A-T Act was finally put to rest for the time being when the parliamentary session ended in the fall of 1997. Amid the countrywide outcry against it, the government apparently did not have the political nerve to formally introduce it into parliament. Neither, however, was it formally withdrawn, hence it remained (and remains) ready to be brought forward again. During the months when parliament was not in session, actions against Maoists, suspected and alleged Maoists, and villagers in "Maoist-affected areas", as well as workers of other left parties continued and appear to have intensified (Amnesty International 1998a). In Kathmandu as well, arrests and intimidation intensified.³¹

³¹ For example, during the commemorative events to mark Chaitra 24, the day of the massacre before the palace during the People's Movement, many were arrested during peaceful marches. Included among them were intellectuals believed by the government to be supporters of CPN (Maoist), although arrests were by

In April of 1998, during the next parliamentary session, the Amendment to the Anti-State Crimes and Punishment Act, 2046 v.s. (Appendix F) was introduced by the Surya Bahadur Thapa-led RPP/NC coalition government just days before Thapa made way for NC leadership. Girija Prasad Koirala's government then continued the effort to pass this amendment. It met with protest of a similar kind and scope as had the A-T Act. On 7 May Girija Prasad Koirala announced at a press conference at his residence that he did "not see the necessity of" the Amendment, but also that "if

no means limited to those individuals. Also in the spring, 52 members of a Peasant's March of supporters of CPN (Masal), who had just completed a one and a half month foot journey in the mid-west, were arrested while peacefully processing from a press conference to the place where they were staying. The offices of *Jan Astha* weekly, which no one could mistake for a pro-CPN (Maoist) publication, after reporting that the Maoists had a copy of a counter-guerrilla warfare plan and printing a photo of its cover were, according to *Jan Astha*, forcibly entered, ransacked while the staff was held at gunpoint, and the editor was interrogated.

necessary it can be brought again". Hence, like the A-T Act, it was left lurking in the wings.

Subsequent events unfortunately confirmed the contentions of protesters that a) the government already had many draconian powers under current law, and b) it had not proven unwilling to go even beyond those limits. Before May was out the government had launched an undeclared police operation which Amnesty International calls an "intensified security mobilization", and the government called Sera Kilo 2. According to Amnesty International (1999a), this operation took place in Rukum, Rolpa, Jajarkot, Salyan, Gorkha and Sindhuli, and probably in Kailali, Kalikot, Ramechhap, Pyuthan, Achham, Bardiya, Surkhet and Banke as well. The operation involved the transfer of armed police units from Kathmandu to these regions and the establishment of new police posts. From 25 May to 7 November 1998, at least 227 were killed and 1659 arrested.³²

During this period arrests of urban intellectuals, interference with press freedom and distribution of publications, and prevention of peaceful public gatherings also significantly increased.³³ In general, there appears to have been a campaign to suppress information about events in the countryside in tandem with Sera Kilo 2.³⁴ But however egregious the

trammeling of freedom of expression among urban intellectuals, it is the events in the countryside that should be placed front and center, for it is far easier for the government to render those invisible and inaudible beyond the confines of the locales where they take place. Moreover, they serve to remind why urban-based intellectuals have been shouting so loudly. Here then, a few examples from the Amnesty International Report covering the Sera Kilo 2 period:³⁵

I. Arbitrary Detention and Violations of Rights of Detainees:

Those arrested...include teachers, farmers, women and human rights defenders, such as lawyers who have been detained on suspicion of being members or sympathizers of the CPN (Maoist). Among them were active members and supporters of mainstream political parties.... None had been given arrest warrants at the time of arrest or were presented before a judicial authority within 24 hours, as required under the Constitution of Nepal. Many had been kept in police custody for

Samacharika, a women journalist's organization reported in a talk at Martin Chautari that they had to pass through 6 levels of security on a fact-finding trip to Jajarkot. More recent reports indicate that similar levels of security have continued, and that all pro-Maoist publications are debarred from the area and possession of one leaves a person subject to arrest under the Public Offences Act.

³⁵ It should be stressed that the violations of rights of detainees and the forms of torture under arrest described in these reports are not new phenomena. What is new is the extent of their use and the extent of killing, both on the spot and after arrest. I use the Amnesty Report for two reasons. First, although many such events have been reported in CPN(Maoist) and other left-oriented publications, reports published there are dismissed by the government as propaganda, and may also be dismissed by readers outside Nepal. Similarly, the government tries to undermine the authoritativeness of the reports of Nepali human rights organizations by alleging that organizations that record government abuses are pro-Maoist. Second, the AI reports generally contain more detail about forms of torture (though press accounts by Maoist and non-Maoist left publications tend to be just as detailed about the manner of executions). It is my own view that a careful reading and comparison of accounts in a variety of Nepali media can provide a more comprehensive overall picture than the foreign human rights reports. Also, while human rights reports (Nepali and foreign though especially the latter) often detail the act of torture or execution, they usually include virtually no meaningful social context. The Nepali press sometimes does, and always could, provide more.

³² In the same period, it should be noted, the CPN (Maoist) is reported to have killed 24 and injured 52 civilians.

³³ For example, CPN (Maoist) newspapers were seized more than once as were other left newspapers, even ones critical of the CPN (Maoist) Policy. On June 14 police prevented a talk program on the subject of "the Maoist People's War, Oppression, Law Enforcement and Information Flow" in which members of the police force and the parliament had been invited to take part. The organizer of the event, Gopal Sivakoti 'Chintan' of National Concern Society and INHURED International was arrested prior to the event, held incommunicado for days, and threatened with various charges including, reportedly, treason (for sending information on the human rights situation inside the country to human rights organizations outside the country). It was at this time that documents from the fact-finding mission carried out under the auspices of the Parliamentary Commission on Human Rights and Foreign Affairs were seized. Later in the year police surrounded the hall where women from a wide range of women's organizations were conducting a talk program. Participants and audience were arrested en masse, over a hundred in total.

³⁴ Besides the seizures of papers and arrests of journalists on the left (both supportive and critical of CPN (Maoist)), Amnesty International (1999a) notes that "editors of mainstream newspapers have reportedly been pressurized by officials of the Ministry of Home Affairs to "play down" coverage of fact-finding reports expressing concern about human rights abuses".

periods longer than the 25 days permissible under the Public Offences Act, the legislation most commonly used to detain people. The majority of ex-detainees interviewed were not told of the specific charges against them. Most had been denied access to relatives or a lawyer, at least during the initial days of their detention in police custody. Several... stated they were forced to sign a statement which said that they had been involved in Maoist activities but promised not to do so in the future.³⁶ Apparently those who surrendered were required to sign [such] a statement in front of the Chief District Officer... Those who surrendered were required to report on a weekly or monthly basis to the local authorities. However, Amnesty International was informed that out of approximately 100 people who were released after they signed such statements in Rukum, Rolpa, Salyan, Jajarkot, Pyuthan and Dailekh districts, about 50 were later rearrested.

II. Torture:

A teacher from Kailali District, Far-Western Region, who was also a member of the local committee of the CPN-UML, who was arrested in August 1998, said that he had been tortured during questioning at the regional police headquarters in connection with a raid by Maoists on a local house during which some weapons were stolen. He was tortured over a period of four days by being subjected to *falanga* with an iron pipe for periods of up to one hour and was also beaten severely on the buttocks. He lost consciousness on several occasions but was revived with cold water. After the *falanga* he could not walk and was carried back to the cell. After 12 days in

³⁶ During Sera Kilo 2 the government announced an amnesty for Maoists who surrendered and signed a document promising not to engage in violent activities. During and since this period, government and mainstream newspapers in particular have carried many accounts of such surrenders - sometimes as many as 200 were reported to have surrendered. Both CPN (Maoist) and other left-oriented newspapers report cases of forcing prisoners to sign such documents, including mass arrests solely for the purpose of having people "surrender" as Maoists in exchange for their release. A number of cases of subsequent police killings of individuals who had surrendered and signed such oaths have also been reported in the Nepali press. While one cannot separate the specific cases of genuine and false surrender in the absence of fact-finding investigations, it is evident from the above that not all "surrenders" are what the government represents them to be.

police custody he was made to sign a paper which he was not allowed to read. He was subsequently released.

A farmer from Achham District, Far-Western Region, arrested in July 1998 for questioning about a theft of weapons from a nearby house, was kept in police custody for 28 days and was subjected to torture for seven days. He was hung upside down and beaten on the calves with a bamboo stick. He was subjected to *falanga* and *belana*, using bamboo sticks. He was repeatedly made to squat and then kicked so that he fell over. He had his ears pulled forcefully. Police officers who were interrogating him said: "you're not going to tell, so we will have to kill you in the forest". He was made to sign a piece of paper which he was not allowed to read.... On 3 August he was taken to court where he was charged with theft and attempted murder and remanded to jail. He was given an arrest warrant with a false arrest date on it, 12 days after his actual date of arrest. He was finally released after two and a half months.

On 13 July 1998 a group of 20 armed police raided a house in Lalitpur District, Central Region where it had been reported that 11 armed Maoist members were staying. One man and two women were killed during the police action and the remaining seven people - four men and three young women aged 19, 16 and 15, were kept at the house for two days, tied together with a rope. During that time, the three young women allege that they were stripped naked. They claim they were brought out of the house on two occasions and were beaten by police with rifle butts on their backs and on the soles of their feet. The police officers threatened to shoot them if they did not have sexual intercourse with them. One of the young women alleged she was repeatedly raped. On 17 July, the three women were transferred to Lalitpur district police office at Jawalakhel. On 15 August 1998, they were transferred to jail in Kathmandu where they are awaiting trial on charges of subversion and illegal possession of weapons.

III. Disappearances:

Mohan Prasad Oli, a lower secondary level teacher and a supporter of the CPN-UML, was arrested by eight armed police in uniform from his home in Mahadeopuri VDC, Banke District, at around midnight on 12 June 1998. According to witnesses, he was dragged to the

main road wearing only his undergarments. There he was put into one of two waiting police vans and taken away. Onlookers heard shots and shouts of "Long Live the Maoists". Relatives suspect police shouted this in order to cover up their identity. When the family lodged a complaint about the arrest, constables at the police post said they were not responsible and suggested that he had been abducted by members of the CPN (Maoist). On further inquiry, the Deputy Superintendent of Police at the District Police Office denied that Mohan Prasad Oli had been taken into custody and the Chief District Officer of Banke District said he had no knowledge of his arrest. The "disappearance" of Mohan Prasad Oli was also raised in parliament but despite a number of appeals to the authorities by both relatives and human rights organizations, to Amnesty International's knowledge, no steps have been taken by the authorities to investigate his "disappearance".

Rajendra Dhakal, a lawyer and human rights defender "disappeared" after his arrest by police on 8 January 1999 from Jamdi, Khairanitar VDC, Tanahun District. He was reportedly arrested along with two teachers, Prem Bahadur Thapa and Naina Dutta Adhikari and taken to the Bel Chautara Area Police Post. The teachers were released two days later. The police had reportedly obtained a warrant for his arrest from the district court on the basis of his alleged involvement in acts of violence by members of the CPN (Maoist) in Gorkha District. Rajendra Dhakal, who is Chairman of Gorkha District Bar Association and a member of the Forum for Protection of Human Rights (FOPHUR), a local human rights organization, had been arrested repeatedly since the start of the Maoist "people's war" and released on the orders of the district court. To avoid further harassment, he had gone into hiding and was staying with friends in Tanahun district at the time of his arrest. In response to a *habeas corpus* petition filed in the Supreme Court on 26 January 1999, the court sent a written order to the police to present him in court within 7 days. In a reply to the court, police in Gorkha district denied having arrested him. At the time of writing his whereabouts were not known.

IV. Extra-judicial Executions:

Hem Raj Khatri Chhetri, Chairman of Tharmare VDC, Salyan District, and two other villagers were beaten and then shot dead in cold blood by police during a public event organized by the All Nepal National Free

Students' Union (Revolutionary) in the village on 26 February 1998. According to reports, when Hem Raj Khatri Chhetri and Khim Bahadur Dangi Chhetri verbally contested the intervention by police to disperse the crowd, they were beaten and then shot at close range. Dhan Bahadur Thapa, an 18-year-old student from Balchaur village, was fatally wounded in the firing and later died. It is also alleged that Hem Raj Khatri Chhetri was lying on the ground at the time he was shot. All three men were reportedly unarmed.

Villagers were witness to the arrest by police of Bishnu Pokhrel and Dhaniram Tharu from Bardiya District on 11 June 1998. Bishnu Pokhrel was a former central committee member of the SJM and Dhaniram Tharu was a leader of the All Nepal Revolutionary Peasants' Association. Farmers said they saw from a distance how police surrounded the two men in their custody in the forest and shot them. When the farmers went closer to the spot, they could find no bodies. Members of local political parties subsequently appealed to the Chief District Officer for information about the two prisoners. The body of Bishnu Pokhrel was eventually handed over to his relatives who were told that he had been killed in an "encounter" (Amnesty International 1999a).

From November 1998, when the above quoted report was issued to the present, press reports of killings have become daily occurrences - 5 here, 7 there, 2 there, 9 there. Which bodies were "Maoist", which "non-Maoist", which shot in the front, which in the back, which with guns in hand, which while empty-handed, may in some cases, among the swirl of claims and counter-claims, never be clear. But one thing is already clear: all were Nepalis, the very people the government has twice recently loudly proclaimed it needed more draconian powers in order to protect. And thus current government policy, which appears to amount to "acting as if the A-T Act was law", is failing as surely as did its 1997 effort to pass the A-T bill into law, though at an immeasurably higher price.

In the events since the defeat of the A-T Act and Amendment to the Anti-State Crimes Act, there seems to be considerable evidence for the truth of the arguments marshalled by opponents. The government has not only activated its extensive legal machinery for imprisoning anyone accused of a violent crime, or a breach of the public peace, and for suppressing rights to expression and congregation.³⁷ The government has also

³⁷ Two recent examples inadvertently display how far from the conceptions of basic rights inscribed in the constitution the authorities can be. The editor and publisher of a pro-Maoist paper were arrested on 5 April

shown willingness to exceed that law, up to and including torture and execution of detainees and execution of unarmed individuals, giving no reason to believe it would be less willing to do so if further protected from public outcry against such abuses by the A-T Act.

The sharpening lines of division in Nepali electoral politics, between a repressive right and a progressive left, that many protesters saw evidence of in the moves to pass the A-T Act and the amendment, may also be continuing to sharpen. In the run up to the elections the five parties that actively fought for passage at various times (RPP, RPP (Chand) NC, CPN(UML) and CPN(ML)),³⁸ are busy trying to differentiate themselves in the eyes of the voters. However, it remains to be seen whether the odd alliances formed during those struggles indicate a willingness to form coalitions not merely for purposes of collecting on holding the reins of power, but for purposes of gathering collectively to themselves powers to repress any and all dissent.³⁹

on charges of "creating panic in the public mind by publishing the Nepal *bandh* and other programmes of the underground CPN (Maoist)" (Kathmandu Post, 5 April, 1999). Recall my earlier point that the A-T Act could be used to label the dissemination of information as "creating an atmosphere of fear in the public". So too, evidently, can the current laws. On 18 March two senior members of the National Mass Movement Coordination Committee were arrested after holding a press conference. At the press conference they called for the resignation of the Health Minister for ineptitude in dealing with the viral influenza epidemic that has killed as many as a thousand in Jumla and other western districts in recent months. They were released shortly after arrest when "police realized that they could not prosecute people for holding press conference calling for the resignation of a minister." So far so good (though tellingly, they did not consider the information that the Ministry of Health was not coping with an epidemic which, in a few months has killed as many people as both sides in the "People's War" from its inception, to be a matter that might 'create an atmosphere of fear in public life'. People, apparently, are supposed to be used to that kind of thing). However, it is necessary to read to the end before concluding that these police had grasped the essence of the rights to expression inscribed in the constitution: "Police sources said, their intelligence had reported that the NMMC was going to make pro-Maoist statements in favor of the on-going Maoist insurgency." (Kathmandu Post 19 March, 1999). In other words, for this "crime" they would have had every right to arrest them.

³⁸ I include here both RPP parties and both UML and ML because they were not yet split in 1997. Moreover, ML is led by the most vociferous supporter of the A-T Act at that time.

³⁹ That such powers would, if history is any guide, almost surely be used against one another as well in

Nor do events subsequent to the defeat of the bills evince any signs that the government is ready to think seriously about the challenges that the CPN (Maoist) has posed to it. The attack-mode approach, even at the price of shredding the constitution which each successive government claims to prize, is the most evident sign of this. But the continued and consistent framing of government discourse in terms of "the Maoist problem" (whether construed as a political or a "terrorist" problem) is another such sign - and perhaps, ultimately, the stronger one. As one of the coordinators of MSDR has pointed out, if the government is serious about a solution to the "Maoist problem", it will have to be serious about solutions to the problems the CPN (Maoist) has organized around. Otherwise, "so long as the roots remain, a thousand shoots will sprout" (Shrestha 2054 v.s.).

Those problems include rampant unemployment, rampant poverty combined with spiraling living costs, massively unequal distribution of land and wealth, passive handover of the country's interests and resources to foreign powers, and lack of basic human rights and necessities in practice for the majority of the population. It was the basic premise of the struggle against the A-T Act that a genuinely democratic government displays the validity and strength of its form of polity through expression in practice of its ideological foundations. The CPN (Maoist), who take the stand that the current state form, by its very nature, cannot resolve the above problems, issues a fundamental challenge: that the only way the government could prove their contention wrong is to display in practice the abilities of the current system to genuinely resolve the problems they point to. Of course they are confident that is not possible. Is there equal confidence on the other side that it is? Certainly the "People's War" creates difficult conditions for such a display, but surely too, the acid test of a system's basic soundness is when under duress. So far, under duress, this one has acted more like a belching tank firing its guns in all directions while cutting a swathe of destruction through unharvested fields, than the well-oiled *bikaas* machine it claims itself capable of being.

Thus far the "aftermath" of the campaign against the A-T Act, in its treatment of "Maoists" and non-Maoists alike must be recognized to include just what protesters predicted, though perhaps did not imagine would reach such proportions -- group murders, mass arrests, press seizures.... These naked acts, unclothed by the "Anti-Terrorist Act, continue to be opposed. People from across a wide political spectrum continue to remind the government that it relinquishes its claim to be a legitimate democratic body when it violates the rule of

times when a given party is out of power does not seem to disturb any of the players. When this point was made to Gautam during a private 1997 meeting, MSDR representatives reported that he acted like it had never occurred to him.

law and the rights of citizens which it claims to embody and protect.

People who issue such reminders are under ever increasing threat of being automatically labeled "Maoist" by the government whether they oppose only particular acts or positions, or whether they oppose the state formation itself. Among the latter, it also fails to distinguish those who have taken up arms against it from those who have not. This developing tendency appears to support the contention, during the campaign against the A-T Act, that the government was engaged in an effort to suppress all progressive forces. Many protesters of government abuses against innocent civilians and CPN(Maoist) cadres alike have also been vocally critical of anything they see as CPN(Maoist) abuse of the people. But they, unlike the government, distinguish these two protests.⁴⁰ In making the equation Protest against Government Abuses = Maoist (or Maoist supporter), the government refuses to acknowledge the standard to which people are holding it. It is hard to believe this is not disingenuous, for that standard is the very one the government claims for itself - that of a democratic polity that gives due process to those it accuses of crimes. And that, many opponents of the A-T Act said loudly and clearly, includes members of CPN(Maoist) who do not claim to uphold the constitution nor to be operating within the laws of the land, and are openly engaged in efforts to overthrow the existing state.

The point opponents of the A-T Act pressed upon was that the government cannot both reject the constitution in practice and institute anti-democratic laws while rhetorically drawing on the constitution and the law as the source of its legitimacy as a democracy. They argued, in effect, that the state cannot attack the people in the name of their "peace and security" and claim democratic credentials. As opposition has turned, in the aftermath of that struggle, to government efforts to engage in extra-legal struggle in practice, while continuing rhetorically to draw on the constitution and the law as the source of its legitimacy as a democracy, these points have become only more pertinent. People continue to make them - at increasing risk.

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⁴⁰ Those who concur in the path of People's War criticize, within this framework, what they view as CPN (Maoist) deviations from the correct implementation of that path or errors according to it. Those who do not concur with the CPN (Maoist) line criticize their activities from outside that framework and generally considerably more harshly. Nevertheless, both distinguish, albeit to markedly differing degrees, between a guerrilla struggle of this kind, and a government with all the forces of the state in its arsenal, in making judgments about abuses and violations of codes of conduct.

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Appendix A:

Proposed TERRORIST AND DESTRUCTIVE CRIME (CONTROL AND PUNISHMENT) ACT, 2054 v.s.

Preamble:

Given that it is desirable to control terrorist and destructive crime and in this relation to make necessary laws to maintain the peace and security of the Kingdom of Nepal and for the sake of the security of the general public

In this twenty-sixth year of the reign of His Majesty King Birenda Bir Bikram Shah Dev this law is made by Parliament.

1. Concise Name and Prolegomena

(1) The name of this law is the "Terrorist and Destructive Crime Control and Punishment Act, 2054".

(2) This law will apply in those regions established by and up to the date fixed by His Majesty's Government as publicized in the Nepal Royal Gazette.

(3) This law will apply throughout the Kingdom of Nepal and outside the Kingdom of Nepal it will apply to Nepali citizens or government employees or governmental or non-governmental offices or their employees or aircraft or ships or any other means of transport registered in Nepal together with their offices and employees, wheresoever they may be located.

2. Definitions: No other meanings shall hold for the content and interpretation of this law:

(a) "Terrorism and destructive crime" are to be understood as any action as given in the following:

(1) With the intention of obstruction of or harm to the security, law and order or system of governance of the Kingdom of Nepal or any portion thereof, the use of any type of weapon, bomb, explosive device or any other instrument or thing, destruction of the property of any place or formulation of a plan to do so or in that place, taking human life, crippling or injuring or acts causing injury or acts of arson or by any other means, acts causing physical or mental harm or, by using a poisonous substance in any thing for public consumption or in any public place, the taking of human life or crippling or causing of any other harm or by means of any of the above mentioned acts to bring about by that act or any other similar act the terrorization of the general public in the course of movement or when individuals are congregated together or,

(2) For the purposes set out in Subsection (1), using the above mentioned means or threatening to do so or, without using those means, using any other instrument, material or means or threatening to do so, taking anyone's life, crippling, causing to be wounded or by any other means threatening to do harm in any place or type of means of transport using force or terrorizing or in that place and that place [sic] or from that means of transport to kidnap anyone traveling by that means of transport with or without the means of transport [itself] or to conspire in that act or to attempt or to give encouragement or to terrorize by such an act or,

(3) For the purposes set out in Subsections (1) and (2), the production, distribution, storage, transport, or import and export, sale, transportation on one's person or installation of any type of weapon or bomb or explosive device, or to assist in such an act, or

(4) Related to the above subsections, to bring about harm by any means to any individual or property, [or] by any other act carried out with the intention of creating an atmosphere of fear or terror in public life.

(b) "Weapon" shall be understood to mean a pistol, revolver or any other similar type of means or machine or dangerous weapon with or without a blade and that word will also be understood to include sticks and stones.

(c) "Ammunition" shall be understood to mean a fog signal, fuse, gunpowder, cap, mortar, detonator, cartridge and any other ammunition of this kind.

(d) "Bomb" shall be understood to mean any arm, including grenades, made from any type of material or means, made to explode by any means or automatically, for military or non-military use, and this word will also be understood to include any arm known as a "bomb" according to international or Nepali practice.

(e) "Explosive device" shall be understood to mean TNT, Amatol Baratol, Pentolite, RDX, Torpex, plastic explosives, dynamite, gunpowder, nitroglycerine, gelegnite, stemite, sellite, guncotton, blasting powder, and this word will also be understood to include any material whatsoever known as an explosive device in international or Nepali practice.

(f) "Poisonous substance" shall be understood to mean any type of poison or solid, powder, or liquid mixed with such poison and this word will also be understood to include any type of poisonous smoke or gas.

(g) "Security personnel" shall be understood to mean the police or Royal Nepal Army or an individual sanctioned by His Majesty's Government to control terrorist and destructive crime.

(h) "Terrorist" shall be understood to mean an individual or group of individuals who, by means of destructive acts, create terror in order to influence the government and to suppress the people by engaging in violence, threats, robbery or spread of false propaganda or attempt to do so or, to serve their own vested interests, make terror their main concern.

(i) "Informer" shall be understood to mean an individual who provides information to security personnel and His Majesty's Government in relation to terrorist and destructive crime or who assists to provide such information.

(j) "Security Officer" shall be understood to mean the Chief District Officer of the relevant district or an authorized employee sanctioned by His Majesty's Government as publicized in the Nepal Royal Gazette.

(k) "Order" shall be understood to mean an order issued by His Majesty's Government or a security official whether publicized in the Nepal Royal Gazette or not.

(l) "Sanctioned" or "as sanctioned" shall be understood to mean sanctioned or as sanctioned in this law or in rules made under this law.

3. Terrorist and Destructive Crime:

(1) If anyone commits, according to this law, a terrorist and destructive crime, action and punishment in accord with this law will be taken.

(2) If anyone attempts or conspires to commit a terrorist and destructive crime or gives encouragement to commit that crime or gives advice or compels or gathers one or more persons to have that crime committed or forms a gang or group for such work or gives an order to do so or to have such work performed or takes part voluntarily or with or without compensation or with the intention of performing such a terrorist and destructive crime, produces or distributes or stores or transports or imports or exports or sells weapons, bombs or explosive devices or poisonous substances or causes the spread of any propaganda or creates obstruction in government communications or gives shelter to or hides any individual involved in any of the above crimes, such an act will also be considered a terrorist and destructive crime.

(3) Action and punishment in accord with this law will be taken against any individual who commits a crime as set out in Sub-article 2.

4. External Application of this Law:

An individual performing a terrorist and destructive crime targeting the Kingdom of Nepal, even if she or he performed the act while residing outside the Kingdom of Nepal, will be treated as if she or he had performed such crime while residing inside Nepal and action and punishment will be taken in accord with this law.

5. Special Authority to Control Terrorist and Destructive Crime:

In order to control destructive crime within their own areas security officers will be able to give any or all of the following orders for action despite anything whatsoever that is written in current law:

(a) Arrest without warrant an individual suspected of being involved in an act of terrorist and destructive crime.

(b) At any time and without notification, to search the house, shop, warehouse, means of transport or any other place, of any individual whomsoever suspected to have stored illegal weapons, ammunition, bombs or explosive devices or to have hidden such things or any terrorist-related suspicious individual.

(c) In order to control terrorist and destructive crime and such acts, to search at any place or on any thoroughfare anyone's person or the belongings with him or her or the means he or she is using, the place or any type of transport in which he or she is riding.

(d) To use necessary force if hindered while making an arrest in accord with Section (a) or while making a search in accord with Sections (b) (c) or while taking any other action.

(e) To use necessary force or weapons against an individual who, while committing or having committed a terrorist and destructive crime, appears to be fleeing or seeking to flee or in a situation that prevents arrest.

(f) To use necessary force or weapons against an individual committing a terrorist and destructive crime to rescue persons forcefully captured or taken hostage from a place or means of transport or aircraft or ship or any other means of transport, to avoid possible bodily injury, risk or terror or to save them from any other harm.

6. Declaring a Terrorist-Affected Area:

(1) His Majesty's Government shall be able to declare an area affected by or amenable to being affected by terrorist and destructive activities.

(2) His Majesty's Government shall be able to issue an order to control transportation and communication systems in areas declared terrorist-affected in accord with Sub-article (1).

7. Ability to Forbid Moving About with Weapons or Ammunition:

(1) Despite anything whatsoever that may be written in current law, in areas declared terrorist-affected on the basis of Article 6, up until the time fixed by His Majesty's Government, no one who has a license to carry arms and ammunition under current law will have the right to do so and an order can be issued to gather those weapons and ammunition together in an established place for the fixed period.

(2) If an order in accord with Sub-article (1) is violated such weapons and ammunition will be confiscated.

8. Penalties and Punishments:

(1) If anyone's life is taken in the course of a terrorist and destructive crime, the primary individual who commits or causes to be committed or conspires to commit and instructs to commit such a crime will have all property confiscated and be imprisoned for life.

(2) If according to this law a crime has been committed but life has not been taken, the principal individual who has committed or caused to be committed or conspired to commit such a crime and instructed to commit such a crime shall be imprisoned for life.

(3) If according to this law a crime is attempted, encouraged, advised or compelled or if more than one individual is gathered to commit or cause such a crime to be committed or if a group is formed or if such an act is ordered or caused to be ordered or if such work is engaged in voluntarily or with or without compensation or if with the intention of committing such a crime weapons, bombs, explosive devices or poisonous substances are produced or distributed or stored or transported or imported or exported or exchanged by any means or propaganda is caused to be carried out or if shelter is given to an individual involved in such crime, or such an individual is hidden, he or she will be sentenced to five to ten years imprisonment depending on the degree of the crime. If property has been damaged by the individual who has committed such a crime, compensation for that damage will be paid by auction of his or her own portion of moveable and immovable property. If paying by that means he or she is unable to settle the necessary payment for damages from his or her property, the outstanding payment will be treated as equal to non-payment of a fine and converted to a period of imprisonment according to current law.

(4) If deliberately hindered while making a search according to Article 5 Section (b) or (c) punishment will be imprisonment for up to one year or a fine of up to Rupees two thousand or both.

9. Confiscation:

(1) If anyone commits a crime deserving punishment according to this law, if any means have been used to commit such a crime those means will be confiscated.

But if means of transport have been used without permission of the owner, such means of transport will not be confiscated.

(2) Means of propaganda used to commit a crime according to Sub-article (2) of Article 3 will be confiscated.

(3) If it is proven that someone has committed a crime deserving punishment according to Article 5 his or her own portion of moveable and immovable property within the Kingdom of Nepal will also be confiscated.

10. Authority to Hear Cases and Appeals:

(1) Courts formed or established as notified in His Majesty's Government Nepal Royal Gazette will have the authority to hear cases involving crimes that fall under this law.

(2) Courts based on Sub-article (1), while taking actions and decisions, will adopt procedures according to "Special Court Law, 2031".

(3) Any party who disagrees with the verdict or final order of the court established on the basis of Sub-article (1) has the right to appeal to the Supreme Court within seventy days of the date of the verdict or the date of hearing the verdict.

11. Government will be the Litigant:

His Majesty's Government will be the litigant in cases coming under this law and those cases will fall under Annexure I of the "Governmental Case Related Law 2049".

12. Special Procedures:

(1) Despite anything whatsoever written in current law, if an individual committing a terrorist and destructive crime is absconding and unlocatable, in order to arrest him or her, as complete a description as possible will be issued in a fifteen day warrant, which information must be posted on office notice boards. There will be no hindrance to taking action according to this law should such an individual not be located or arrested within that time period.

(2) Any individual, employee or security personnel can be used as an informer in a terrorist and destructive group and on the basis of involvement in that group that individual, employee or security personnel will not be subject to any punishment according to current law.

(3) The identity of the informer will be kept confidential.

(4) Despite anything whatsoever written in current law, on the basis of this law if the accused against whom a case has been brought provides His Majesty's Government, police employees or any authority reliable important information or evidence or gives direct assistance to discover the primary criminal responsible for actual leadership in the crime, such an accused can be established as a government witness and if such an accused has been established as a government witness, no punishment will be made on the basis of current law.

But if he or she provides false written information or fictitious evidence or without reasonable cause is seen to act out of ill intentions, if the government's advocate claims that such an individual deserves to be treated as an accused for purposes of punishment, the court will be able to enforce punishment.

(4) [sic] Despite anything whatsoever written in current law, on the basis of this law a person accused of involvement in a crime can be, with the permission of the court, held in custody for investigation for up to ninety days from the date of arrest.

13. Control over Means of Communication and Record-Keeping:

His Majesty's Government will be able to control and keep records of the correspondence, telephone, fax and other such means of communication of an individual involved in terrorist and destructive activities.

14. Arrangements for Medical Expenses and Compensation:

(1) His Majesty's Government will bear the treatment expenses and make compensation payment if police or security personnel are crippled or killed in the course of control and investigation of terrorist and destructive activities.

(2) His Majesty's Government will make arrangements related to necessary treatment and other relief benefits for victims affected by terrorist and destructive activities.

15. Protection for Acts Performed in Good Faith:

No authority or individual can be punished on the basis of this law or rules made on the basis of this law for any work or act performed or attempted to be performed in good faith.

16. Right to Form a Coordination Committee:

(1) For the coordination of activities related to control and investigation of terrorist and destructive crime, His Majesty's Government will be able to form Coordination Committees at the central, regional and district levels.

(2) Individuals appointed by His Majesty's Government will comprise the Coordination Committees formed according to Sub-article (1).

17. No Time Limit:

There will be no time limit for filing cases under this law.

18. Right to Make Rules:

In order to implement the objectives of this law His Majesty's Government will be able to make necessary rules.

19. Protection:

All that is written in this law will be in accord with this law and other matters will be treated in accord with current law.

(Translated by Khagendra Sangraula and Mary Des Chene for the Movement to Save Democratic Rights, August, 1997)

Appendix B:

Violations of International Human Rights Obligations of Nepal By Proposed Terrorist and Destructive Crimes (Control and Punishment) Bill 2054 v.s. of HMG Nepal.

GROUND FOR AN URGENT ACTION APPEAL

Nepal restored multi-party democratic system in 1990 and promulgated a new Constitution in 1991. The fundamental rights guaranteed by the Constitution include:

1. Freedom of speech and expression (article 12) which can only be restricted to safeguard sovereignty, territorial integrity or harmonious relations among various castes and communities or to prevent sedition, defamation or contempt of court or instigation of crimes or acts against public morals, or during the period of public emergency.
2. Right to criminal justice (article 14) provides for the prohibition of both mental and physical torture or other cruel, inhuman or degrading treatment during custody; the right to be presented before a judicial authority within 24 hours from the time of arrest; the right to legal counsel, and information about the reasons of arrest; freedom from arrest and detention without an order of a court of law. It also provides for compensation for the victims of torture. The King himself cannot suspend this article even in times of public emergency under article 115(8).
3. Right against preventive detention (article 15) provides for compensation for the victims of illegal preventive detention.
4. Right to privacy (article 22) provides for the right to personal liberty, residence, property, documents, correspondence and information except in accordance with the law.

The proposed Terrorist and Destructive Crimes (Control and Punishment) Bill violates all of these fundamental provisions of the Constitution. The Supreme Court has extraordinary jurisdiction to entertain writs and declare such as legislation as void under article 88(1).

After the restoration of multiparty system seven years ago, Nepal proudly became a State Party to about 20 international human rights instruments. They include the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol under which the citizens of Nepal can even file complaints before the UN Human Rights Committee in New York, upon the exhaustion of domestic remedies, for the violations of the rights by the government guaranteed under the ICCPR. *The proposed Bill violates the following articles under the ICCPR:*

1. Non-derogable rights (article 4) which are to be fully respected even in time of public emergency that threatens the life of the nation. They include the guarantee of the right to life or punishment only after the final judgment rendered by a competent court; right against torture, cruel, inhuman or degrading treatment or punishment; and freedom of thought and conscience.
2. No laws can be made to restrict or derogate from any of the fundamental human rights recognized or existing in any State Party to the ICCPR pursuant to law, conventions, regulations or custom on the pretext that the present ICCPR does not recognize such rights or that it recognizes them to a lesser extent.
3. Right to liberty and security of person and freedom from arbitrary arrest or detention (article 9). Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or

other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

4. Right to humane treatment (article 10) which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
5. No restriction can be made on the right to liberty of movement unless it is necessary to protect national security, public order, and public health or morals (article 12).
6. Right to a fair trial (article 14) which provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him. In any case, where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay it ;
 - (e) To examine, or have examined, the witness against him and to obtain the attendance and examination of witness on his behalf under the same conditions as witness used in court;
 - (f) Not to be compelled to testify against himself or to confess guilt; Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. If a final decision shows a miscarriage of justice, the person shall be compensated according to law.
7. Right to privacy (article 17) which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Nepal is obligated under article 2(3) of the ICCPR:

- (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for the legal system of the State, and to develop the possibilities of judicial remedy; and
- (c) to ensure that the competent authorities shall enforce such remedies when granted.

* No discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is allowed under article 2(1) of the ICCPR.

* The provision of special court and proceedings in camera are not recognised under international law and the concept of a competent court only means an independent judiciary and judges who conduct a fair and prompt trial in public, and are free from any kind of undue influence of the government through appointment, job tenure, salary or other benefits.

Another human rights treaty that the proposed Bill violates is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Nepal in 1991.

- Article 2(2) of the Convention provides that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."
- Article 5(3) does not exclude any criminal jurisdiction exercised in accordance with internal law such as the criminal jurisdiction under the proposed Bill.

The definition of "torture" under article 1 the Convention covers "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The Nepali government has internationally binding obligation to investigate all violations of human rights committed by its security forces and government officials and bring them before justice. *On the contrary, the proposed Bill provides all possible safeguards to the perpetrators of criminal justice and human rights violations.*

According to article 9 of the Nepal Treaty Act 1992, any domestic laws that are not in compliance with international treaty obligations automatically become void and ineffective, and that the government has a binding obligation to immediately undertake necessary legal measures for the implementation of such treaty provisions, including the ICCPR and the Convention relating to torture, either through the enactment of new legislation or an amendment in existing legislation.

Therefore, the proposed Bill grossly violates the above mentioned provisions under the ICCPR, the Convention relating to torture, and other minimum international human rights norms and standards applicable in a democratic society. It also violates the basic principles of the rule of law and democracy guaranteed under international law and the Constitution of the Kingdom of Nepal.

Outline Prepared by Gopal Siwakoti "Chintan" INHURED International
Putalisadak, Kathmandu, Nepal. August 28, 1997

Appendix C:

Statement against the Anti-Terrorist Bills by International Physicians for the Prevention of Nuclear War August 1997

Rt. Honourable Prime Minister of Nepal
Mr. Lokendra Bahadur Chand
His Majesty's Government
Nepal

From: International Physicians for the Prevention of Nuclear War on behalf of its Board of Directors

Dear Prime Minister:

We are writing to you on behalf of International Physicians for the Prevention of Nuclear War, a non-partisan federation of physicians in 84 countries dedicated to the prevention of war, the prohibition of nuclear weapons, and the attainment of peace through health for all the world's people. We received the Nobel Peace Prize in 1985 for our work on the prevention of nuclear war.

Our attention has been drawn to the government of Nepal's legislative proposal for a „Terrorism and Destructive Crime Control and Punishment Act, 2054." We are also aware of widespread public concern and of a protest movement against this proposed legislation by several organizations in Nepal, and by intellectuals, human rights groups, physicians, lawyers and other professional groups, both within and outside Nepal. The purpose of this letter is to convey to the government of Nepal our acute concern as to the ramifications of the proposed bill should it be enacted. We earnestly

appeal to you to reconsider the chilling effects this legislation will have on civil society in Nepal and to suspend efforts to move this legislation forward.

For several years as an organization dedicated to health, a just global order, and world peace, we have watched with appreciation the progress of Nepal towards democracy, human rights and progress in socio-economic development. It is all the more commendable that this progress has been achieved in the face of limited resources, and the advances made by Nepal speak eloquently of the quality of leadership in your country. The proposed legislation, despite good intentions, is likely to damage this positive international image of Nepal and to reverse the gains you have made in recent years.

The historic changes that have swept human society ever since World War II have underlined a profound phenomenon of our age - that peace and development, democracy and inalienable rights of the people to exercise their creativity and free thought are the keys to human progress. Working with governments as partners and as people's representatives, the non-governmental organizations have seen many, many instances where countries that suppress people's creativity, whether it be for the sake of state security or for any other reason, do not succeed in terms of progress and socio-economic development. We are confident that Nepal does not belong to that category.

International Physicians for the Prevention of Nuclear War has always worked for a just global order and to ensure that the developing countries and the least developed countries have an equal voice with prosperous industrialized nations. Our fight against nuclear weapons policies is, in part, based on our conviction that a few countries have no right to determine the fate of the world. In this light, as your friends, we fervently appeal to you to reconsider your plans to enact legislation that has the danger of being perceived within and outside Nepal as being contrary to the best interests of the people of Nepal and of civil society.

With profound respect.

Yours sincerely,

Victor W. Sidel, M.D.
Co-President, International Physicians for the Prevention of Nuclear War

Acad. Sergei Kolesnikov
Co-President, International Physicians for the Prevention of Nuclear War

Ron McCoy, M.D.
Co-President, International Physicians for the Prevention of Nuclear War,
and Chair, Board of Directors

cc: Mr. Bama Deva Gautam
Deputy Prime Minister and Home Minister
His Majesty's Government, Nepal

August 28, 1997

Appendix D:

Joint Declaration regarding Abolishment of the 'Black Law'

Our attention has been drawn to the government's current activation of the "Public Protection Act, 2046", a law which had the ill-reputed name of "The Black Law" during the Panchayat era, and to its preparation to seek passage of the Destructive Crime related Act from the parliament.

It is absolutely certain that both these laws push Nepal toward the autocracy and police state of the Panchayat era. These laws will, in many respects, limit and block the democratic rights of the entire Nepali people. These laws will give recognition in name only to the universal human rights of the people to independent living, expression of opinion, congregation, and making of political choices on the basis of one's own beliefs.

The provisions of these laws, which, on the basis of the suspicion of administrative and security personnel, under the label of "terrorists" allow, without warrant, the arrest, imprisonment and search of anyone whomsoever, and for "use of force" including shooting to kill against protesters, are not for the control of terrorism, rather they will enable an

unlimited form of state terrorism. These provisions will bring a flood of state violence in the country. The average person's life will be made extremely insecure by these provisions.

These legal premises are not only in contravention of the Nepali constitution, they are also in contravention of the United Nations' Declaration of Universal Human Rights to which Nepal is a signatory. The premises of these laws directly violate the international understanding of citizens' and political rights.

Therefore, we are placing before the government a strong appeal - the government should immediately abolish the activated "Public Security Act, 2046 v.s.". And, at the same time, immediately stop all governmental effort to bring parliamentary approval of the "Terrorist and Destructive Crime Control and Punishment Act".

If this does not occur and if the government puts governmental effort toward the passage and implementation of these Black Laws - to lift the country from the despotic dark chasm into which it will be pushed we will be compelled to take to the streets.

We are calling on all those on the side of the country's democracy and humans rights to unitedly and with all powers struggle in this cause..

Signatories

Name	Organization
Sushil Pyakurel	INSEC
Ishwari Chandra Gyawali	National Anti-Imperialism Forum
Sushil Chandra Amatya	SAARC Teachers Federation
Sindhu Nath Pyakurel	Nepal Bar Association, Human Rights Committee
Tirtha Basaula	Nepal Human Rights Association
Padma Ratna Tuladhar (MP)	Forum for Protection of Human Rights
Mukti Pradhan	People's Rights Concern Campaign
Khimlal Devkota	People's Rights Concern Campaign
Saroj Dhital	Physicians for Social Responsibility, Nepal
Gopal Chintan	National Concern Society
Krishna P. Subedi	Forum for Protection of Human Rights
Manik Lal Shrestha	National Anti-Imperialism Forum
Kailesh Kumar Sivakoti	Human Rights and Environmental Protection Front
Shyam Shrestha	National Anti-Imperialism Forum
Matrika Timsina	Forum for Protection of Human Rights

[Distributed to the Press and submitted to HMG, July 1997]

(Translated by Saroj Dhital)

Appendix E:

Appeal to the Honourable Members of Parliament

Human rights activists, legal experts as well as informed and conscious citizens have consistently been calling for the repeal of all laws of the Panchayat era which are not consistent with the present democratic Constitution of Nepal. Unfortunately, however, and contrary to public expectations, His Majesty's Government has re-activated the dormant Public Security Act which is widely seen as a repressive "black law". As part of the same regressive step, it has come to light that preparations are underway to introduce before Parliament a Terrorist and Destructive Activities Crime and Punishment Bill.

Reports of human rights organisations provide ample proof that, even without the support of such autocratic and arbitrary laws, state law enforcement machinery continues to violate human rights in Nepal. Because the law enforcing agency was nurtured within an autocratic culture, the acutely felt need of today is to re-educate the police to enable them to function within democratic norms. The proposed Bill, on the contrary, seeks to provide such an unreformed agency sweeping discretionary powers ^ an arrogant act which we feel will also undermine the rights and sanctity of the judiciary. Existing laws of Nepal are quite adequate to take care of any problem that can arise within Nepali society.

In spite of this, it is a shameful irony that leaders of the 1990 Peoples' Movement professing pluralist democracy as well as the parliamentarians elected from amidst them should even contemplate such an undemocratic Bill. This proposed legislation should be seen as an effort to push Nepali society away from pluralist democracy towards an autocratic police

state. Such a regressive act is but one expression among cumulative steps to curtail the achievements of democracy written into the present Constitution as well as an ominous harbinger of mortal blows against the democratic forces within the country. It is being opposed widely both within and outside of Nepal.

Because there is grave danger facing the Nepali people and their democratic rights at the present hour, the Movement to Save Democratic Rights, established by concerned citizens sensitive and committed to the preservation of human rights, makes a strong appeal to the Hon. Members of Parliament not to allow passage of this Bill under any circumstance. We hold that even introducing such a Bill in Parliament is a serious insult to the commitment, responsibility and honour of any Member of Parliament dedicated to democracy and people's rights. Let all be assured that, if this Bill were to be passed, it will be burned by the Nepali people in the same manner as the autocratic Panchayat constitution was in 1990. History is ruthless, and no one can escape its harsh judgment!

25 Saun, 2054 (9 August 1997)

Committee for the Movement to Save Democratic Rights

Coordinator: Padmaratna Tuladhar

Members:

Dr. Mathuraprasad Shrestha
Damannath Dhungana
Kalyandev Bhattarai
Dipak Gyawali
Kapil Shrestha
Sushilchandra Amatya
Sushil Pyakurel
Gangadevi Kasaju
Shyam Shrestha
Suresh Ale Magar
Parashuram Tamang
Gauri Pradhan
Nandakumar Thapa
Gopal Sivakoti 'Chintan'
Khagendra Sangraula

(Translated by Dipak Gyawali)

Appendix F:

Proposed Amendment to Anti-State Crimes and Punishment Act, 2046 v.s.

OBJECTIVES AND REASONS

This bill is being presented for the addition of articles 5a and 6a in the Crimes against the State and Punishment Act, 2046 (1990) to make legal arrangement to prevent terrorist and destructive acts in various parts of the kingdom since there has been no law yet to discourage individuals, groups or organizations engaged in creating fear and terror among the people and that there have been legal problems of their release on bail once actions are taken under the existing law that provides less than three years of imprisonment leading to further increase in the confidence of terrorists and destructive elements creating serious disorder and the situation of anarchy in the country against the Preamble and the main spirit of the Constitution of the Kingdom of Nepal, 2047 (1991).

5a. DESTRUCTIVE AND TERRORIST ACTS: Anyone engaged in robbery, vandalism, attack, destructive act or by any other means or harms to private, public or government's property; created fear and terror among the general public or involved in carrying bombs, gelatin or other explosive materials or collection, transportation, sale or use of arms with such objectives or similar conspiracies; provided assistance or encouragement or gathered to commit such acts or engaged in publicity or collection of donations for such acts in cash or kind or provided protection to individuals engaged in such acts or involved in training for such acts or made attempts to commit destructive and terrorist acts shall be punishable from four to 10 years of imprisonment with fines as equal to the loss of property, and life imprisonment in case of a death.

6a. TO BE DECLARED ILLEGAL: Any union, association, organization or group engaged in crimes punishable under this Act can be declared illegal by His Majesty's Government of Nepal.

(Translated by Gopal Siwakoti 'Chintan' for Movement to Save Democratic Rights)

April, 1998